

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: §
§
MOODY NATIONAL SHS § CASE NO. 10-30172-H1-11
HOUSTON H, LLC § CHAPTER 11
§
§
DEBTOR §

UNITED STATES TRUSTEE'S OBJECTION TO
DEBTOR'S PLAN OF REORGANIZATION
(docket #21)

TO: THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

COMES NOW, CHARLES F. McVAY, UNITED STATES TRUSTEE FOR THE
SOUTHERN DISTRICT OF TEXAS ("UST") through the undersigned in furtherance of his
administrative duties and files this objection to the DEBTOR'S PLAN OF REORGANIZATION
(docket #21) and requests that the Court deny confirmation plan, or in the alternative, confirmation
of this plan without modification, for the following reasons:

1. Charles F. McVay is the United States Trustee for the Southern and Western Districts of Texas.
2. The UST is an officer of the United States Department of Justice. 28 U.S.C. §581. His duties are set forth in 28 U.S.C. 586, 11 U.S.C. §307, and throughout the Bankruptcy Code. 11

U.S.C. §101 et. seq.

3. One significant responsibility of the UST is to supervise the administration of cases under Chapter 11 of the Bankruptcy Code. 28 U.S.C. §586. Specifically, the UST is charged with monitoring plans and disclosure statements filed in cases under chapter 11 of title 11 and filing with the court, in connection with hearings under sections 1125 and 1128 of such title, comments with respect to such plans and disclosure statements. *Id.* at §586(a)(3)(B).

No Authority To Propose Plan

4. The UST objects to confirmation of MOODY NATIONAL SHS HOUSTON H, LLC'S ("MOODY/DEBTOR") Plan of Reorganization ("Plan") because after review of this Debtor's Tenants in Common Agreement (TICA) it does not appear that the Debtor has authority to propose on behalf of all other tenants in common (TICs) reinstatement of the subject note on the Springhill Suites Medical Center Reliant Park (the "Project").

5. On information and belief, the Debtor is currently one of twenty-nine (29) TICs with an undivided interest in the Project, a Marriot branded Hotel. The agreement between these TICs is governed by the attached TICA, which is incorporated as Exhibit A for all purposes. The TICA describes that the association of these TICs is not a partnership or joint venture in fact or in law. See TICA Recital 1.

6. On information and belief, the Debtor holds a 0.7965% undivided interest in the Project.

7. Unanimous consent of all TICs is required under §2.2.1 of the TICA for several purposes, including ". . . (iii) any loan, or modification of any loan, secured by the Project". The Debtor has filed no document indicating that it has the consent of all of the TICs in the Project to propose a plan to reinstate the mortgage note of RLJ III-Finance Houston, LLC ("RLJ") as proposed in the Debtor's Plan.

8. The TICA does not give any one (1) TIC the authority to file for bankruptcy reorganization of the Project. While the TICA does not speak explicitly to reinstatement of the mortgage note on the Project, it repeatedly states that no TIC is authorized to do any act that will bind any other TIC or incur any obligation with respect to the Project. See TICA §2.2 Section 9 of the TICA provides that if any TIC “becomes bankrupt” (as that term is defined in the TICA) that Moody National Realty Company L.P. (“Moody National”) has the right of first refusal and the other TICs have second priority to purchase the debtor TIC’s interest. However, the TICA is silent as to whether any one TIC by its “becoming bankrupt” may bind or affect the interest of other TICs in the Project. This provision of the TICA suggests that the other TICs are unaffected by the bankruptcy of any other TIC. So, while the filing of a bankruptcy by one TIC may afford relief of the automatic stay to the interest of the debtor-TIC in property it holds jointly and severally with other TICs, the debtor-TIC is not thereby authorized under the TICA to resolve issues of the entire Project by and through a plan of reorganization.

9. The Debtor’s 0.74956% interest in the Project is the Debtor’s only asset. Without the other TICs filing and jointly administering their cases, it does not appear that a plan of reorganization can be proposed in this bankruptcy case which involves either reinstatement of the mortgage note or other actions affecting the disposition of the Project. The Debtor’s only possible “plan” is the sale of its 0.74956% interest to Moody National, another TIC, or other investors.

Plan Deficiencies

10. If the Court finds that the Debtor has the authority to propose the current Plan of Reorganization, then the UST objects to this Plan because it fails to provide for financial reporting to the UST, specifically the reporting of disbursements made by or on behalf of the

Debtor and all other TICs, and the payment of UST quarterly fees. Disbursements under the proposed Plan would include all payments made pursuant to the proposed Plan¹ necessary to cure all deficiencies and reinstate the mortgage note, including all rental payments, lien payments and administrative costs paid on behalf of and for the benefit of the Debtor as an investor in the Project.

WHEREFORE, THE UNITED STATES TRUSTEE PRAYS THAT this Court deny confirmation of the Debtor's Plan of Reorganization, or in the alternative, deny confirmation without provision for financial reporting to the United States Trustee and the payment of UST quarterly fees until this case is closed or converted to chapter 7, or for other and further relief as may be appropriate.

DATED this the 26th day of January, 2010.

CHARLES F. McVAY
UNITED STATES TRUSTEE

/s/ Nancy L. Holley
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¹ Disbursements contemplated by the Plan include \$568,743.07 to the class 1 secured creditor, \$54,688.27 to the class 2 lienholder, and all administrative expenses.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the above UNITED STATES TRUSTEE'S OBJECTION TO DEBTOR'S PLAN OF REORGANIZATION without Exhibit A has been served upon the Debtor, Debtor's Counsel, and all of the TIC's listed on the Debtor's mailing matrix, while a copy of the objection **with** Exhibit A has been served upon all other parties in interest on the Debtor's mailing matrix. All parties listed below were served by either ECF transmission OR by first class mail, postage prepaid, on the 27th day of January, 2010.

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Parties in Interest and Requesting Notice

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